

COURT OF APPEALS OF TEXAS

Hearn v. Ellis

504 S.W.2d 518 (Tex. Civ. App. 1973) · Decided December 27, 1973

SUMMARY

This Texas appellate opinion concerns a personal-injury action arising from an automobile collision. The court upheld a jury verdict for the defendants, concluding that the evidence supported the jury’s failure to find that the defendant discovered the plaintiff’s peril in time to avoid the collision. The court also rejected the claim that the trial judge improperly commented on the weight of the evidence and affirmed the judgment.

CASE DETAILS

COURT	Court of Appeals of Texas
WRITING FOR THE COURT	Stephenson
JURISDICTION	Texas
DECIDED	December 27, 1973
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed a jury verdict and judgment for defendants in a personal-injury action arising from an automobile collision.
STANDARD OF REVIEW	For the no-evidence point, the court considered only evidence favorable to the challenged jury answer. For the insufficient-evidence and great-weight-and-preponderance points, it considered the entire record. The court reviewed the trial court's control of the proceedings for abuse of discretion and applied Texas Rule of Civil Procedure 434 for reversible error.
PRECEDENTIAL VALUE	Published Texas Court of Appeals opinion
PARTIES	Zelda Hearn, Plaintiffs v. Paula Ellis, Defendants

TOPICS

- negligence
- proximate cause
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

- Torts
- Automobile negligence
- Texas appellate procedure
- Evidence

QUESTIONS PRESENTED

1. Whether there was legally or factually sufficient evidence to support the jury's failure to find that Paula Ellis discovered and realized Zelda Hearn's perilous position in time to avoid the collision by exercising ordinary care.
2. Whether the trial court improperly commented on the weight of the evidence when it limited the manner in which counsel could display additional photographs to the jury.
3. Whether alleged errors concerning damages required reversal despite the jury's adverse liability findings.

HOLDINGS

1. The evidence was legally and factually sufficient to support the jury's failure to find that Paula Ellis discovered and realized Zelda Hearn's peril in time to avoid the collision, and the contrary-evidence challenge presented fact questions for the jury.
2. The trial court did not abuse its broad discretion or improperly comment on the weight of the evidence by directing counsel not to pass additional photographs to the jury unless they were different, while allowing the photographs to be offered, identified, and explained.
3. Any alleged errors concerning the damages issue were immaterial because the jury found against plaintiffs on liability.

KEY QUOTATIONS

“A trial judge is vested with broad discretion in controlling a trial, and we find nothing in this record to show that the statement by the trial court violated that discretion.” (504 S.W.2d at 521)

FACTUAL BACKGROUND

Zelda Hearn stopped at a stop sign, turned right onto Denman Avenue in Lufkin, and entered the outside lane of traffic. Paula Ellis, who had been driving on Denman Avenue and had changed into that lane, struck the rear of Hearn's automobile. Ellis testified that she braked, honked, and swerved as soon as she saw Hearn pull into her path; other evidence supported a different account, but the jury resolved the factual disputes against Hearn.

PROCEDURAL HISTORY

The case was tried to a jury. The jury found that defendant Paula Ellis was not negligent, found that plaintiff Zelda Hearn failed to yield the right-of-way and that the failure was a proximate cause of the collision, and rendered findings adverse to plaintiffs on the discovered-peril issue. The trial court entered judgment for defendants, and the appellate court affirmed.

DISPOSITION

affirmed

CASES CITED

- Best Investment Company v. Hernandez, 479 S.W.2d 759 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.)

- Sands v. Cooke, 368 S.W.2d 111 (Tex. Civ. App.—San Antonio 1963, no writ)
- Trinity Universal Insurance Company v. Jolly, 307 S.W.2d 843 (Tex. Civ. App.—Austin 1957, writ ref'd n.r.e.)
- Texas Mexican R. Co. v. Bunn, 264 S.W.2d 518 (Tex. Civ. App.—San Antonio 1953, writ ref'd n.r.e.)

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